

Docket No.: V0005.70100US00
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Ashwini Kumar Gupta et al.
Serial No.: 10/527,844
Confirmation No.: 1829
Filed: January 9, 2006
For: PROCESS FOR THE PREPARATION OF 2-AMINO-4,5,6,7-
TETRAHYDRO-6-AMINO BENZOTHAZOLES FROM
CYCLOHEXANES AND CYCLOHEXANONES AS
INTERMEDIATES
Examiner: J. Mabry
Art Unit: 1625

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I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4).

Dated: November 24, 2010

Signature: /Nicole Gaffney (Nicole Gaffney)

APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 CFR § 1.705(d)

Mail Stop Issue Fee
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In accordance with 37 CFR § 1.705(d), Applicant requests reconsideration of the patent term adjustment (“PTA”) for U.S. Application No. 10/527,844 (“the ’844 application”). Applicant provides, below, a statement of the facts involved, specifying the correct PTA and the basis under 37 CFR § 1.702 for the adjustment, the relevant dates for which adjustment is sought, and the adjustment to which the patent is entitled.

1. The correct PTA is **177 days** and not 0 days as calculated by the USPTO.

2. Under 37 C.F.R. § 1.703(a)-(f), the current period of adjustment due to examination delay is as follows:

- a. A period of **237 days** under 37 C.F.R. § 1.703(a)(1) for failure of the USPTO to mail either an action under 35 U.S.C. § 132 or a notice of allowance under 35 U.S.C. § 151 not later than 14 months from the date the '844 application was filed under 35 U.S.C. § 111(a) or fulfilled the requirements of 35 U.S.C. § 371. This period of delay is in agreement with the PTA calculation by the USPTO. (Applicant's calculation: The requirements of 35 U.S.C. § 371 for the '844 application were fulfilled on January 9, 2006. The 14-month period ended March 9, 2007. The first Office Action was mailed on November 1, 2007, 237 days after March 9, 2007.)
- b. A period of at least **214 days** under 37 C.F.R. § 1.703(b) due to the failure of the USPTO to issue a patent on the '844 application not later than three years after the date on which the national stage commenced under 35 U.S.C. § 371 in an international application, but not including the sum of the number of days in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. § 132(b) was filed and ending on the date the patent was issued. This period of delay is *not* in agreement with the PTA calculation by the USPTO. (Applicant's calculation: The '844 application was filed on March 15, 2005 as a national stage filing under § 371. The three year period after the commencement of the national stage ended on March 15, 2008. Applicant requested an RCE on December 15, 2008, 214 days after March 15, 2008.)
- c. Under 37 C.F.R. § 1.703(f), the term of a patent shall be adjusted for the sum of the periods calculated under paragraphs 37 C.F.R. § 1.703(a) through (e), to the extent that such periods are not overlapping, less the sum of the periods calculated under 37 C.F.R. § 1.704. Of the delays attributable to the USPTO, none of the days under 37 C.F.R. § 1.703(a)(1) overlap with those under 37 C.F.R. § 1.703(b).

- d. Thus, the total period of USPTO delay is **451 days**, which is the sum of the delays enumerated in paragraphs 2(a) and 2(b) above, subtracting any overlap (of which there is none).

3. Pursuant to 37 C.F.R. § 1.704, the current total period of USPTO delay is reduced by the period of Applicant delay, which Applicant determines to be **274 days**. This period of delay is in agreement with the PTA calculation by the USPTO.

4. Accordingly, the current correct patent term adjustment for the U.S. Patent that issues from the '844 application is at least **177 days**, which is the current total period of USPTO delay (451 days) minus the period of Applicant delay (274 days).

5. The correct PTA methodology, as determined in *Wyeth v. Kappos*, 591 F.3d 1364 (Fed. Cir., 2010), governs the USPTO's calculation of the patent term adjustment for the U.S. Patent that issues on the '844 application. Applicant's patent term adjustment methodology, as outlined above, is consistent with the patent term adjustment methodology determined in *Wyeth v. Kappos*.

6. The '844 application is not subject to a terminal disclaimer.

Applicant submits the fee of \$200.00 as set forth in 37 CFR § 1.18(e). Please charge any deficiency, or credit any overpayment, to Deposit Account No. 23/2825, with reference to Attorney Docket No. V0005.70100US00, from which the undersigned is authorized to draw.

Dated: 11/24/10

Respectfully submitted,

By /Timothy J. Oyer/
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